**THE HON'BLE Ms. JUSTICE G. ROHINI**

**Writ Petition No.10524 OF 2006**

**Dated: 28-07-2006**

Between :

1. M/s. Bharat Metal Box Company Limited
Rep. by its Managing Director, Prakash Agarwal,
Hyderabad. ... Petitioner

And

The Chief Manager, The Bank of
Rajasthan Limited, Hotel Rajdhani Compound
Hyderabad. ...Respondent

**THE HON'BLE Ms. JUSTICE G. ROHINI**

**Writ Petition No.10524 OF 2006**

**JUDGMENT:**

The first Petitioner is a company. It is not in dispute that the

1st petitioner-company having availed the consortium loan facilities from the respondent-Bank (Bank of Rajasthan Limited) and Punjab National Bank committed default in repayment. The respondent-Bank filed O.A. No. 1593 of 1999 before the Debt Recovery Tribunal for recovery of dues payable by the petitioner-company and the same is pending adjudication. It is stated that due to adverse market conditions, the 1st petitioner sustained huge losses. Though it was declared as sick under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985, ultimately the reference was dismissed by the B.I.F.R. by order dated 29.7.2003. Aggrieved by the same, the 1st petitioner preferred an appeal before the A.I.F.R., being Appeal No. 328 of 2003, which is stated to be pending.

While so, the respondent-Bank issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Securitisation Act') calling upon the 1st petitioner to pay a sum of Rs. 30,59,26,809.26ps., allegedly outstanding to the consortium banks. Having received the said notice, the 1st petitioner filed W.P. No. 21395 of 2003 challenging the constitutional validity of Section 13(1) and (2) of the of the Securitisation Act. Though initially, stay of all further proceedings pursuant to Section 13(2) notice was granted by this Court, ultimately, by order dated 23.2.2006, the said writ petition was dismissed as infructuous in view of the decision of the Supreme Court in MARDIA CHEMICALS LTD., vs. UNION OF INDIA ([1]).

In the meanwhile, the Reserve Bank of India vide proceedings dated 3.9.2005 issued certain guidelines for "One Time Settlement" scheme for recovery of non-performing assets in

S.M.E. sector. In terms of the said guidelines, the 1st petitioner by letter dated 22nd October, 2005 made a proposal for One Time Settlement to consortium of banks individually offering to pay Rs. 215 lakhs each. The said proposal was accepted by Punjab National Bank and accordingly by letter dated 8.3.2006 the 1st petitioner was informed the acceptance of offer of Rs.2,15,00,000/- against the total dues as on 31.12.2005. No such acceptance was intimated by the respondent-Bank. However, the 1stpetitioner was informed by the Punjab National Bank by letter dated 15.5.2006 that its O.T.S. offer was not acceptable to the respondent-Bank. Aggrieved by the same, this writ petition is filed with the following prayer :

> *".. ... to issue a order or orders or writ more particularly one in the nature of Writ of Mandamus declaring the rejection of petitioners OTS proposal application by the respondent as arbitrary, illegal and violation of principles of natural justice and petitioners rights guaranteed under Articles 14 & 19 (1) (g) of the Constitution of India and consequently direct the respondent to consider the OTS proposal to settle the accounts of petitioners under the principles of Reserve Bank of India guidelines applicable to non-performing assets for reduction of interest and reducing the liability of the petitioners and pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice."*

The petitioners pleaded that the A.I.F.R. had already recorded the settlement made between the petitioner and the Punjab National Bank in its proceedings dated 27th March, 2006. It is contended that as per the guidelines prescribed by R.B.I., the respondent-Bank is bound to consider the request of the petitioner for "One Time Settlement". Instead of accepting the offer made by the petitioner, the respondent-Bank was about to take action under

Section 13(4) of the Securitisation Act. Hence, this writ petition seeking a declaration that the rejection of the petitioner's O.T.S. proposal by the respondent is arbitrary and illegal and violative of principles of natural justice as well as the rights of the petitioner guaranteed under Article 14 and 19(1)(g)of the Constitution of India and consequently direct the respondent to consider the O.T.S. proposal to settle the accounts of the petitioner under the guidelines of the Reserve Bank of India applicable to non-performing assets.

I have heard the learned Counsel for both the parties and perused the material on record.

It is true that the Reserve Bank of India vide proceedings dated 3.9.2005 issued certain guidelines for implementation of "One Time Settlement Scheme" for recovery of non-performing assets below rupees ten crores. The said guidelines show that the scheme is to be implemented by all public sector banks. It was also made clear that the guidelines would not cover the cases of willful default, fraud and malfeasance, but only non-performing assets in S.M.E. sector which have become doubtful or loss as on 31st March, 2004 with outstanding balance of Rs. 10 crores and below on the date on which the account was classified as doubtful would be covered. The guidelines are also made applicable to cases on which banks have initiated action under the Securitisation Act and also the cases pending before the Debt Recovery Tribunal/B.I.F.R. subject to consent decree being obtained from the Courts/D.R.Ts./B.IF.R.

In the case on hand, admittedly the account of the petitioner was classified as non-performing asset on 31.3.1992 by the respondent-Bank in accordance with the guidelines issued by the Reserve Bank of India. However, the respondent-Bank contended

that the O.T.S. scheme of the Reserve Bank of India is not applicable to it since it is a private bank. The respondent also raised an objection as to the maintainability of the writ petition on the ground that the respondent is not a State or an agency or instrumentality of the State under Article 12 of the Constitution of India.

In the counter-affidavit, though it is admitted that the 1st petitioner was declared sick on 9.6.1999 and the Punjab National Bank was appointed as an Operating Agency, it is stated that despite several opportunities, the 1st petitioner could not submit a rehabilitiation proposal as agreeable to secured creditors. As a matter of fact, by order dated 18th July, 2000 the B.I.F.R. directed the 1st petitioner to negotiate and finalise the O.T.S. with banks within 15 days itself and to deposit Rs. 25.00 lakhs in a "No Lien Account" with the Operating Agency. The 1st petitioner had failed to comply with the same and even after a lapse of three years, the 1st petitioner could not submit any viable revival proposal before the B.I.F.R. Accordingly, the B.I.F.R. by order dated 29.7.2003 concluded that the revival was not possible. So far as the offer made by the 1st petitioner for settlement of a sum of Rs. 215 crores is concerned, it is stated that the said offer was not acceptable to the respondent since the claim of the respondent was much higher than the amount offered under the O.T.S. proposal. It is further stated that the petitioner's account falls under the category of non-performing assets which are classified as doubtful or loss as on 31.3.2004. The outstanding amount as on the date of declaring the said account as doubtful or loss was Rs.219.43 lakhs, but, not Rs. 180 lakhs as claimed by the petitioner. It is further stated that Rs.215 lakhs offered by the 1st

petitioner by way of OTS proposal as against Rs.38.00 crores outstanding as on 31.3.2004 is not at all viable and therefore not acceptable.

In support of the objection as to the very maintainability of the writ petition, the learned counsel for the respondent has relied upon the decision of this Court in V. SRIRAMULU vs. KARUR VYSYA BANK LTD., & OTHERS ([2]).

This Court in the above decision was dealing with an identical objection raised by the respondent therein, viz., Karur Vysya Bank Ltd. - a private bank. Having reviewed all the decided cases on the subject, it was held that the Karur Vysya Bank Ltd., no doubt obtained licence from the Reserve Bank of India, nevertheless, it cannot be treated as a State for the purpose of Article 12 of the Constitution of India and therefore Mandamus cannot be issued to it as the same does not perform any public duty. While arriving at such a conclusion, this Court took into consideration the fact that the Karur Vysya Bank was not a creation of statute nor established under the provisions of a statute.

The respondent-Bank also stands on the same footing. Though the banking business of the respondent-Bank is regulated by a statute made by the Parliament, it cannot be said that the respondent discharges public functions or vested with any public duty. Hence, as rightly contended by the learned Counsel for the petitioners the writ petition is liable to be dismissed on that ground alone as not maintainable.

Even on merits, the specific case of the respondent-Bank is that the guidelines issued by the Reserve Bank of India for implementation of One Time Settlement are not binding on it since it is not a public sector bank.

It is true that the respondent-Bank is included in the Second Schedule to the Reserve Bank of India Act, 1934 and it is a Scheduled Bank within the definition of Section 2 (e) of Reserve Bank of India Act and consequently the provisions of the Reserve Bank of India Act are applicable to it.

It is also not in dispute that the respondent-Bank is a Banking Company as defined in Section 5(c) of the Banking Regulation Act, 1949 (for short "the Banking Regulation Act") read with Section 5(b), which defines banking company. As per Sub-Section (3) of Section 21 of the Banking Regulation Act, every banking company shall be bound to comply with any directions given to it under Section 21 of the Banking Regulation Act. That apart, Section 35-A of the Banking Regulation Act empowers the Reserve Bank of India to give directions in the public interest or in the interest of banking policy or to prevent the affairs of any Banking Company being conducted in a manner detrimental to the interests of the depositors or to secure the proper management of any Banking Company.

However, under the guidelines issued by the Reserve Bank of India for "One Time Settlement" it was expressly stated that the guidelines are applicable only to public sector banks.

The respondent Bank specifically pleaded that since it is a private Bank, the guidelines are not binding on the Private Sector Banks and consequently it is not mandatory for the respondent Bank to accept the O.T.S. proposal by the 1st petitioner.

On the other hand, the learned Counsel for the petitioners pointed out that under Section 2 (d) of the Recovery of Debts Due To Banks and Financial Institutions Act, 1993 (for short, 'the Act, 1993) the World Bank includes a Banking Company and as per Section 2 (e) of the said Act, the word 'Banking Company' shall

have the meaning assigned to it in Section 5 (c) of the Banking Regulation Act, 1949. Thus, according to the learned Counsel for the petitioners, a Banking Company which is engaged in the banking business is a Bank over which the Reserve Bank of India shall have regulatory power and as per Section 35-A of the Banking Regulation Act, the guidelines which are statutory in nature have binding force.

It is true that the Reserve Bank of India is entitled to lay the banking policy which is applicable to all the Banking companies. However they are regulatory measures for the purpose of carrying on commercial activity in banking. If they fail to follow, the Banking Regulation Act itself has provided certain consequences.

The guidelines issued by Reserve Bank of India indicating the method of implementation of the OTS scheme for recovery of non-performing assets are merely directory and cannot be held to be mandatory in nature. As a matter of fact, the said guidelines exempted certain category of cases such as cases of willful default, fraud and malfeasance. Similarly, the NPAs crossing Rs.10 crores are also exempted. The guidelines also did not indicate the maximum or minimum amount at which the OTS has to be agreed upon. Thus, it is clear that it is always open to the concerned Bank either to accept or not depending upon the facts and circumstances of the case.

Moreover, the matters relating to recovery of loans are contractual in nature. Particularly the One Time Settlement of accounts is nothing but a compromise between two parties to contract. Such settlement can be arrived at only with the consent of both the parties, particularly the consent of the creditor who has to relinquish a part of his claim and agree to take a lesser

amount. In the absence of consent of one of the parties, there cannot be settlement of accounts. In the case on hand, the respondent had categorically stated that the offer made by the 1st petitioner is not at all viable. It is also stated that the petitioner being a willful defaulter, the guidelines would not attract.

The mere denial by the petitioners of the said allegations, would not entitle them to seek a Mandamus compelling the respondents to accept the proposal of one time settlement.

As expressed above, the guidelines are not mandatory in nature and they do not confer any legal right on the petitioner which can be enforced against the respondent Bank. On that ground also, the petitioner cannot seek a Writ of Mandamus.

For the aforesaid reasons, I do not find any substance in the contentions raised by the petitioners that the respondent Bank is bound to accept its OTS proposal.

Though the learned Counsel for the petitioners across the bar raised a further contention that the proceedings initiated by the respondent Bank under the Securitisation Act without withdrawing the proceedings pending before the Debts Recovery Tribunal are impermissible in view of the amendment to Section 19 of the Act of 1993, I am not inclined to go into the said issue in the absence of a specific plea to that effect in the writ petition. The complaint of the petitioners in the instant case being only the rejection of its OTS proposal, it is not necessary for this Court to express any opinion as to the entitlement of the respondent Bank to proceed further under the Securitisation Act.

For the aforesaid reasons, the Writ Petition is devoid of any merit and accordingly the same is dismissed. No costs.

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G. ROHINI, J.

Dt. 28-7-2006

Pnb/gbs

**THE HON'BLE Ms. JUSTICE G. ROHINI**

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**Dated: 28-07-2006**

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[1] (2004) 4 SCC 311

[2] 2006(2)ALT 405